IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

1.Rajendra Kumar @ Raju Vs. State of Rajasthan

D.B. CRIMINAL APPEAL NO.914/2005 against the judgment dated 23.7.2005 passed by Shri Mohammad Anwar Ali, RHJS, ADJ(FT), Jhalawar in Sessions Case No.74/2005.

2.Prema alias Prem Chand Vs. State of Rajasthan

D.B. CRIMINAL APPEAL No.512/2000 against the judgment dated 11.8.2000 passed by Shri N.L. Champawat, RHJS ADJ, Jhalawar in Sessions Case No.112/91.

Date of Judgment :: December 21,2006

REPORTABLE

PRESENT
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. P.C. Bhandari for Mr. Sanjay Tyagi &
Mr. Arvind Bhardwaj for the appellants.
Mr. S.S. Sharma, Public Prosecutor for the State.
Mr. Surendra Sharma for the complainant.

BY THE COURT: (Per Hon'ble Kothari, J.)

1. These two appeals are being disposed of by a common judgment as the incident involved is same though they were decided by the learned trial court by different judgments.

2. According to the prosecution, on 15.7.1991 at 10.15

AM in broad day light in Mangalpura, Jhalawar, near Kota, accused persons Rajendra Joshi alias Raju, appellant in Appeal No.914/2005 (the main accused), Prema alias Prem Chand, appellant in Appeal No.512/2000, and others Anurag Singh alias Bichala, Manish Joshi alias Golu, Chandra Prakash alias Chandu Nai and 2-3 other people came with bare swords and fire arm from the side of Purvaj hotel and assaulted Pramod Kumar Bhargava who was sitting in the hotel of Ishwar Mali, Pw.5 situated on the corner of a triangle of two roads. Shri Pramod Kumar Bhargava, 25 years of age was taking tea in the said hotel of Ishwar Mali where these accused persons are said to have attacked him and when he tried to run away for saving himself, he was pushed outside the said hotel and as a result of colliding with one cycle standing there, he fell down and the main accused sat upon him and cut his throat by a sword while other co-accused Prema, appellant in the connected appeal, caught hold of legs of the deceased Pramod Bhargava and as a result of said injuries of sword the said person died instantly. It is also stated in the FIR lodged by brother of the deceased Bhupendra Bhargava, Pw.6 that he along with his 2-3 friends were also taking tea and reading newspaper on a stone bench outside the office of the United Insurance Company situated just across the road of the hotel of Pw.5 Ishwar Mali and when they heard the commotion and saw the scene of brother of Pw.6 Bhupendra Singh being

attacked in the aforesaid manner, they ran towards the accused but the accused had done their job by that time by slitting the throat of deceased and also the main accused took out his fire arm and warned everybody around not to come near them otherwise they would be killed and thereafter they ran away from the same side from which they came.

3. The brother of deceased Pramod Bhargava, Bhupendra Singh immediately went to the police station situated very near to the place of incident opposite that hotel and lodged the First Information Report, Ex.P.12. Besides narrating the aforesaid version it was also stated in the said FIR lodged with Police Station Kotwali, Jhalawar that the same persons had tried to attack and kill his brother Pramod Bharagava on earlier occasion also on 23rd November and that all these persons had come with a common object and intention of killing his brother on the said date 15.7.1991 with the arms and killed his brother and before he and his friends could reach and save his brother, the accused persons escaped and ran away. The police after recording the said FIR No.180/91 undertook the investigation of the case and upon claiming trial, the learned trial court tried the accused persons. It may be stated here that the co-accused Prema was convicted by the impugned judgment dated 11.8.2000 U/s.302 read with 149 IPC and sentenced to life imprisonment and fine of

Rs.1,000/- and in default of payment of fine imprisonment of three months and also U/s.148 and 452 IPC and also U/s.4/25 of the Arms Act. Since the main accused Rajendra Kumar alias Raju was absconding and was arrested only on 15.12.1991 after about six months of the incident, he was tried separately and by the impugned judgment dated 23.7.2005 was also convicted under the aforesaid provisions in the same manner and was sentenced for life imprisonment and fine of Rs.5,000/- and in default of payment of fine further imprisonment of five months and other sentences as stated in the impugned judgments.

4. The prosecution examined as many as 16 witnesses for establishing its case including eye witnesses and produced 24 documents Ex.1 to Ex.24 and in defence no defence witness appears to have been examined nor any document was produced and only the statement of Virendra alias Dabbu Chopra recorded U/s.161 Cr.P.C. is marked as Ex.D.1. The same person is also examined by the prosecution as Pw.7.

5. According to Pw.6 Bhupendra Singh, brother of the deceased whose statements were recorded by the learned trial court on 30.9.96 in Sessions Case No.112/91 he has stated that on the date of incident about 5 years ago his brother Pramod Bhargava had gone to hotel for taking tea while he was reading newspaper on the stone patti outside

the United India Insurance with his friends Virendra Chopra, Rajendra, Tinni and Mohan Lal Suman who were also reading newspapers, when 6-7 people including Rajendra Kumar Joshi, Anurag Singh, Chandu Nai, Manish Joshi alias Goru and Prema Mali came and they went inside the hotel of Ishwar Mali and attacked his brother and when his brother Pramod Bhargava came out from the hotel to save himself he was again pushed and when he fell down, he was attacked and was killed. Raju according to him had sword in his hand and other 6-7 people also had swords in their hands and on what part of the body his brother was attacked and cut he did not know. That on earlier occasion also on 23.11.1990 when his brother Pramod was going to mines where he used to work, they attacked him and at that time also he had lodged report in police station. The FIR Ex.P.12 has been given by him and his signatures A to B were his. The police immediately according to him came at the site and made 'panchnama' of the dead body and the place where the incident took place was main market of Mangalpura and at the time of incident there were so many people coming and going on the said road. In his cross-examination he said that the mines did not belong to his brother Pramod and he was only serving there. He also said that his brother was earlier a lower division clerk in S.P. Office in accounts section. He did not remember that his brother Pramod deceased, Anwar or others had looted at any point of time a bus plying on

Jaipur-Bhopal route or shouted slogans of Khalistan. He also did not remember any incident of his brother having stabbed somebody in the court complex. He admitted that his uncle Ajay Kumar Bhargava was also in the police service. He also stated that the hotel in which his brother was taking tea had two gates, one on the eastern side and the other towards the western side and the insurance company outside which they were sitting were situated on the western side across the road of the said hotel. He denied that the FIR was lodged by him after consultation with his relatives and he had singly gone to the police station which was situated only 25-30 steps away from the place of incident.

6. The other eye witnesses whose statements were recorded by the learned trial court from prosecution side namely Pw.7 Virendra Chopra, Pw.8 Rajendra Shanker Sharma and Pw.9 Mohan Lal Suman also reiterated the same story almost in the same manner. Pw.5 Ishwar Lal, the owner of the hotel, however, was declared hostile and he denied having seen the said incident as he stated that he took tea to the office of “Desh Ki Dharti” newspaper nearby and returned after about 20 minutes and on return he saw the dead body of deceased Pramod Bhargava outside the hotel and the police officials had come there and were doing the formalities. He refused to have seen the incident. Pw.4 Abdul Rashid, an independent local

resident was also examined by the prosecution and he also stated that he was taking tea around 10.00 to 10.15 AM on the date of incident in the hotel situated near post office to Mangalpura belonging to Ishwar Mali, 4-5 persons coming from Patan side came in the hotel with bare swords and attacked Pramod Bhargava who had been in S.P. Office, Jhalawar and the accused persons attacked with swords on his head and when he ran out, he fell down after colliding with a cycle and Gogu alias Manish sat on the deceased and another person named Santu caught hold of legs of Pramod and Ramesh caught hold of hands of Pramod where upon the same person Gogu slit open the throat of deceased Pramod. He stated that there were in all 4-5 persons on which two were standing nearby and three persons killed Pramod and ran away from Patan side of the road. In his cross-examination he has stated that when the main accused Manish (Rajendra Kumar alias Raju) was cutting the throat of deceased Pramod, he said that he and his uncle had beaten him in police station and, therefore, the accused would kill him. He also stated that within 10-15 minutes, brother of Pramod also reached to the place of incident and the hotel persons had cleaned the hotel table etc., before police arrived at the spot and the dead body of Pramod was kept outside the hotel on road side only. Pw.7 Virendra Chopra has reiterated the same story and he has stated that co-accused Prema Mali had caught hold of legs and Goru

caught hold of hands of Pramod and Raju sat on his stomach and cut his throat open and as a result of which a lot of blood came out from the body of deceased Pramod and he died on the spot. While doing so the main accused Raju had taken out his revolver and warned everybody not to come nearby otherwise they would be killed and after killing Pramod Bhargava, they ran away. The said witness also identified the accused persons on the date of his statements. He stated in his cross-examination that on the date of incident Bhupendra had lodged the report in police station and his statements were recorded by the police whereas his statements were recorded on the next day. Pw.8 Rajendra Shanker Sharma has also reiterated the aforesaid version and named accused Rajendra Kumar alias Raju and Prema Mali who actually participated in the said killing of deceased Pramod Bhargava. Pw.9 Mohan Lal Suman also deposed as an eye witness and repeated the aforesaid version without any contradictions during his cross-examination.

7. The post mortem report Ex.P.8 dated 15.7.1991 conducted by Dr. Gauri Shanker Chauhan, Pw.3 shows the cause of death as a 'shock C/A as a result of fatal injury of neck'. The post mortem report shows as many as 8 incised wounds of different descriptions. The same are extracted below:-

(1)**Incised Wound**- 9″x1″xBone cut vertically oblique Rt. Fronto Parietal bone 1½″ apart from mid-line.
(2)**Incised Wound-**4″x1″xBone Cut > Top of left side head (Parietal region) 1″ apart from mid line.
(3)**Incised Wound** – 5″x 2½″x up to Cervical Vertebrae > ant aspect of Neck 1½″ above sternal Notch.
(4)**Incised Wound-**3″x1½″x cutting of left Sterno clavicular joint and cut of 3rd rib.
(5)**Incised Wound** – 2½″ x 1″x up to cutting Rt. Shoulder joint (Capsule) ant.-aspect, Horizontally.
(6)**Incised Wound**- 2″x 1″x cutting capsule of left elbow joint posteriorly (Horizontal)
(7)**Incised Wound**- 1″ x ½″ x 1″ Muscle deep -Lat. Aspect- Middle of left arm (Horizontal)
(8)**Incised Wound** – 3/4″ x ½″ x Bone deep - 8th rib. Anterior aspect mid clavicular line. Rt. Side of chest.

8. The injuries on neck are described by the concerned Doctor Pw.3 as under:-

"Neck- Cutting of Sterno mastoid. Plolyser (plasma) and other neck muscle ant. Aspect Both side, cutting trachea 4th ring (Torn) cut through & through Both side carotid vessels. Jugar vessels Vagues Nerves also cut through and through and through, cut line present over the 6th cervical vertebrae."

9. Pw.3 Dr. Gauri Shanker Chauhan conducted the post mortem of deceased Pramod Bhargava has proved the said post mortem report in his statements recorded by the learned trial court. He has also opined that the injuries on the neck of the deceased could be inflicted by a sword or any other sharp weapon. He has also opined that the shock resulting in the death was on account of haemorrhage and excessive bleeding.

10. The IO, Pw.15 Bheem Singh was examined by the

prosecution on 4.11.1997. He was posted as A.S.I. In Police Station Kotwali on the date of incident 15.7.1991. He stated that Bhupendra gave the Tehriri report in police station Ex.P.11 on the basis of which FIR No.180/91 U/s.302/34 IPC was registered and after recording the statement of complainant, he immediately proceeded for the site of incident situated near the police station, got photography of the site of incident done vide Ex.P.2 & Ex.P.3. The site plan Ex.P.4 was prepared and after taking samples of blood soil and other nearby soil and a clutch of hair and then he took the dead body of deceased Pramod Bhargava for post mortem. During investigation he recorded the statements of various eye witnesses as aforesaid. In his cross-examination he has stated that for registering the FIR in question only complainant Bhupendra Bhargava had come in the police station and it was wrong to say that the said FIR was registered after post mortem report was received. He has said that the cutting in Ex.P.11 FIR from G to H place in the timing of recording of FIR was not done in his presence. He has further stated in his cross that the inner portion of the hotel of Ishwar Mali could be seen even from the place where the eye witnesses claimed to be sitting i.e. on the stone bench outside the office of United India Insurance because the gate of the western side of the said hotel was broad enough. He was not aware that deceased Pramod Bhargava was summoned by the court

as a witness in Jhalara Patan Police Station Case No.11/90, a case U/s.302 IPC, however, he admitted that Pramod Bhargava was complainant in FIR No.11/90 of the said police station. According to him deceased Pramod Bhargava was not a habitual offender and he was also not aware of the fact that deceased Pramod Bhargava along with Mahesh and Anwar had looted any bus of RSRTC near Teendhar Chauraha nor he could say that there were 15 to 20 criminal cases against deceased Pramod Bhargava. Pw.16, Devi Shanker, incharge of Malkhana in his statements recorded on 4.11.1997 has stated that he had taken 6 packets from the IO in relation to said case which he had delivered on 9.10.1991 to Dhool Singh, Pw.13 for taking to Forensic Science Laboratory, Jaipur which he deposited there on 10.10.1991 and receipt was brought to the police station which is Ex.P.26. Pw.13, Dhool Singh has confirmed the said version in his statements.

11. Mr. P.C. Bhandari appearing for the main accused Rajendra Kumar alias Raju and Mr. Arvind Bhardwaj appearing for Prema Ram Mali in the connected appeal both addressed lengthy and comprehensive arguments before the Court. Their contentions can be summarised briefly as under:-

(i)that there was cutting in the timing of Ex.P.11, FIR lodged by Pw.6 Bhupendra Kumar from 11.00 AM to 10.30

AM whereas the incident is reported to be of 10.15 AM and this cutting is to cover up the arrival of brother of deceased Pw.6 Bhupendra Kumar at the scene of occurrence who in fact was not available at the site as claimed by him and, therefore, he could not be the eye witness of the incident.

(ii)that Ishwar Mali, Pw.5, owner of the hotel where the said incident is said to have been taken place had turned hostile and he claims to have not even seen the incident and, therefore, the benefit of doubt should go to the accused.

(iii)that in the statements of Pw.4 Abdul Rashid, the so called independent witness, there were inconsistencies in naming the different accused persons and he has also stated that brother of deceased Pramod Bhargava was called later on.

(iv)that in the FSL report whereas only 6 packets were sent to FSL, Jaipur, the report Ex.P.24 dated 16.7.1993 shows 8 items examined by the FSL including item No.7 chaku (knife) and khukhari (talwar) whereas there is no description of this last item No.8 khukhari also having been sent for FSL. Since the recovery of khukhari (talwar) is shown only from the principal accused Rajendra Kumar after his arrest on 15.12.1991, there

was no question of sending the same to FSL, Jaipur on 9.10.1991.

(v)that there was no recovery of any fire arm though it is mentioned in the FIR that the accused persons were armed with bare swords and fire arms (katta).

(vi)that there was change of IO in the present case and the investigation was handed over on the very next date to one Mohan Lal Cheema who was not even examined by the prosecution and, therefore, adverse inference should be drawn against them.

(vii)that since the case was registered U/s.302/34 and 302/149 IPC and two of the accused Manoj alias Goru and Man Mohan were acquitted the present appellants also deserved acquittal. It was further stated that during the pendency of the appeal two co-accused Chandu alias Chandra Prakash Nai and Anurag Singh had expired and that is why only two present appeals have been filed.

12. As against this, learned Public Prosecutor Mr. Sharma vehemently supported the impugned judgments and conviction of the appellants and taking us through the various statements of prosecution witnesses, he urged that in such case of sensational broad day light murder with arms, the prosecution had established its case

beyond reasonable doubt of the present appellants having committed the murder of Pramod Bhargava and they deserved no sympathy and the conviction and sentences awarded by the learned trial court deserved to be maintained. He submitted that the cuttings in the timing of FIR which is recorded in a printed proforma, was a bona fide clerical error and no adverse inference could be drawn on account of said cutting in the timings from 11.00 AM to 10.30 AM which must be the correct time of reporting by Pw.6, Bhupendra Bhargava because the incident itself took place on 10.15 AM and the police station was almost just opposite the place of incident about 25 yards away and, therefore, giving of timing of 10.30 AM was correct and the same cannot be said to be a delay in recording of FIR. He further submitted about FSL report that 6 packets sent to FSL, Jaipur might contain the said 8 items in question as there may be more than one item in one packet and though he could not point out any separate sending of item No.8 khukhari which was recovered from the principal accused after his arrest on 15.12.1991, he submitted that since the report of FSL was of 15.7.1993, the said item No.8 could also be very well included in the FSL report. The said khukhari was recovered at the instance of principal accused himself as proved by the statement of Pw.15, Bheem Singh, IO. He further stated that from a careful perusal of the site plan Ex.P.4, it would be clear that the eye witnesses sitting on the stone bench

outside the office of United India Insurance including Pw.6 Bhupendra Kumar, Pw.7 Virendra Chopra, Pw.8 Rajendra Shanker Sharma and Pw.9 Mohan Lal Suman could very well see the incident taking place as the distance between the hotel where the deceased was taking tea from the said place was hardly 20-25 feet and, therefore, the version given out by the eye witnesses without any material contradictions in their cross- examination were worthy of reliance and clearly established the guilt of the accused persons beyond reasonable doubt who had come with a common object and intention to kill the deceased Pramod Bhargava to the place of incident and by inflicting fatal injuries by bare swords, they had in fact killed him. About the other appellant Prema Ram Mali in connected appeal, the learned Public Prosecutor submitted that his having caught hold of the legs of the deceased at the time of incident and thereby helping the principal accused Rajendra Kumar alias Raju who sat on the stomach of deceased and cut his throat open was proved beyond reasonable doubt and, therefore, he was also equally guilty and liable to be convicted by the aid of Section 302/149 IPC.

13. We have carefully considered the rival submissions, perused the record and gone through the impugned judgments of the learned trial court in both the sessions trials.

14. The learned trial court in para 28 of its judgment dated 23.7.2005 in Sessions Case No.74/2005 against the main accused Rajendra Kumar alias Raju has found that the FIR Ex.P.11 was registered by the complainant Bhupendra Bhargava just after the incident which took place at the hotel of Ishwar Mali, Pw.5 and his brother Pramod was taking tea in the said hotel at around 10.15 AM and his friends Virendra Chopra alias Dabbu, Rajendra alias Tinni and Mohan Suman were reading newspaper sitting on the stone patti outside the office of United India Insurance when the group of accused persons Rajendra Joshi alias Raju, the appellant herein, Anurag Singh alias Bichla, Manish Joshi alias Golu, Prema Mali and Chandra Prakash alias Chandu Nai and 2-3 other people came from the side of Purvaj Hotel having bare swords and fire arms in their hands with a common intention and object of killing his elder brother Pramod Bhargava and they soon upon entering the said hotel of Ishwar Mali started to attack Pramod with the swords and when Pramod tried to run away for saving himself they pushed him down on the road just outside the said hotel and with the sword the principal accused Rajendra Kumar sat upon him and cut down his throat while the other appellant Prema Mali caught hold of his legs and thus not allowing him to move. The learned trial court has relied the version given by the eye witnesses including Pw.6, Bhupendra Kumar and has not

disbelieved the version given by Pw.6 Bhupendra Kumar merely because he is the interested witness being the brother deceased Pramod Bhargava. The FIR was registered just after 15 minutes of the incident and, therefore, the same could not be termed as concocted. The learned trial court has also believed the version given by other eye witnesses Pw.7 Virendra Chopra, Pw.8 Rajendra Shanker Sharma and Pw.9 Mohan Lal Suman. Since the death in question was found to be instantaneous and the injuries on the post mortem report on the body of deceased Pramod Bhargava tallied with the injuries which could be effected by sword (talwar) and in view of uncontroverted versions of eye witnesses, the learned trial court convicted the principal accused U/s.302/149 IPC and other provisions as stated in the impugned judgment. The learned trial court also did not accept the submission of learned counsel of the accused that Pw.4 Abdul Rashid ought to have been declared hostile because he could not identify the accused persons in the court. Since the learned trial court found that learned Public Prosecutor had cross-examined the said witness after taking due permission from the court and the court did not consider it necessary to declare the said witness hostile nor there was any request from the side of learned Public Prosecutor to this effect, his non-identification of accused persons which may be on account of fear could not be ruled out but since other eye witnesses had duly named

and identified the accused persons and their statements remained uncontroverted during their cross-examination, no benefit of doubt could be given on this account to the accused persons. The learned trial court also found that there was consistency in the statements of all the other eye witnesses, the medical report and description of injuries given by Pw.3 Dr. Gauri Shanker Chauhan also tallied with the injuries inflicted upon the body body of deceased Pramod Bhargava as proved by the various eye witnesses in their respective statements. The recovery of khukhari (talwar) vide Ex.P.28 at the instance of principal accused Rajendra Kumar who was arrested belatedly on 15.12.1991 was also believed by the learned trial court and it was also found that the said khukhari (talwar) for which there was no valid licence with the said accused, therefore, the learned trial court found that the offence alleged against the accused appellant Rajendra Kumar alias Raju was proved by the prosecution beyond reasonable doubt and he was liable to be convicted U/s.148, 452, 302/149 IPC and Section 4/25 of the Indian Arms Act and was liable to be sentenced to life imprisonment and other punishments as stated in the impugned judgment.

15. In the other judgment under appeal dated 11.8.2000 in Sessions Case No.112/91 convicting the other appellant before us Prema Mali also the learned trial court

discussed in detail the account given by all the eye witnesses as aforesaid and clearly found established the charge against the appellant Prema Mali that when the main accused Rajendra Kumar alias Raju sat on the deceased Pramod Bhargava and cut down his throat, the appellant Prema Mali had caught hold of his legs so that he could not move and thus helped his co-accused person to kill the deceased, Pramod Bhargava. The learned trial court in that trial also similarly believed the versions given by various eye witnesses of the incident and found that all the accused persons have formed an illegal assembly and after arming themselves with the deadly weapons for a common intention and object, had come to the place of incident in the hotel of Ishwar Mali from the side of Purvaj Hotel to attack and kill the deceased Pramod Bhargava and after committing the said crime, they ran away from the place of incident.

16. While delivering the said judgment on 11.8.2000, the learned trial court, however, mentioned in the judgment that the principal accused Rajendra Kumar Joshi alias Raju was still absconding which is not the correct fact as from the later judgment dated 23.7.2005 against the principal accused Rajendra Kumar Joshi alias Raju which has also mentioned the passing of the conviction order in Sessions Case No.112/91 vide judgment dated 11.8.2000

that the said principal accused Rajendra Kumar was arrested on 15.12.1991 and was tried separately and the file of the case after being transferred to different courts was transferred to the court of learned Additional District & Sessions Judge (Fast Track), Jhalawar on 18.7.2005. Though preferably when the principal accused Rajendra Kumar who was arrested on 15.12.1991 ought to have been tried simultaneously when other Sessions Case No.112/91 was being tried against accused persons, the said discrepancy, though of little consequence of mentioning that the principal accused Rajendra Kumar was absconding, could have been avoided.

17. Be that as it may, the appellant before us Prema Mali was convicted by the learned trial court in the judgment dated 11.8.2000 U/s.302/149 IPC and was sentenced to life imprisonment and fine of Rs.1,000/- and in default of payment of fine, further imprisonment of three months and also U/s.148, 452 IPC and Section 4/25 of the Indian Arms Act.

18. Having appreciated the contentions and reasonings given by the learned trial court on two different occasions in both the judgments under appeal, we are of the considered opinion that both the present appeals do not have any force and they deserve to be dismissed. The prosecution has established the charge against both the

appellants before us beyond reasonable doubt and has rightly convicted both the appellants under the provisions as stated above of Indian Penal Code and Indian Arms Act. On the strength of account given by various eye witnesses in which there were no material contradictions and turning hostile of the owner of the hotel Ishwar Mali, Pw.5 was found to be of no consequence shaking the case of the prosecution. We have also considered the main contentions raised by the learned counsel appearing for the accused appellants. We are of the opinion that the cutting in the timing of the FIR from 11.00 AM to 10.30 AM cannot be said to be a mala fide or deliberate cutting so as to cast any doubt on the lodging of FIR by Pw.6 Bhupendra Kumar, brother of the deceased, nor this leads us to believe that Pw.6 Bhupendra Kumar was not available at the site of the incident on the date of occurrence. The minor discrepancies in the statements of Pw.4 Abdul Rashid in mixing up the names so as who caught hold of the legs and who caught holds of the hands of the deceased is also of not much help to the accused appellants because other three eye witnesses who claimed to have known the deceased Pramod Bhargava and also the group of accused persons have very clearly identified them and, therefore, such minor mixing up of the names by Pw.4 Abdul Rashid who only was a local resident and was also taking tea in the same hotel cannot be held to dislodge the version

given by other eye witnesses. Similarly, we are inclined to accept the explanation given by the learned Public Prosecutor about FSL report of item No.8 khukhari (talwar) which was examined and report of FSL dated 16.7.1993 Ex.P.24 describing the said item No.8 khukhari (talwar) to contain blood stands cannot be disbelieved merely because that was sent to FSL, Jaipur later on after arrest of the principal accused Rajendra Kumar alias Raju. There is no force also in the submission of the learned counsel for the appellants that non-recovery of any fire arm (katta) from the accused appellants should make us disbelieve the entire prosecution story. Admittedly there was no fire from any such fire arm nor the deceased Pramod Bhargava was killed by using such fire arm but he was killed by cutting open his throat by sword (talwar) which was admittedly recovered from the principal accused Rajendra Kumar alias Raju. Thus, mere non-recovery of any fire arm (katta) does not demolish the case of the prosecution because no such fire arm was used for committing the crime.

19. Therefore, since the prosecution has succeeded in establishing all links of the chain of events indicating commission of heinous offence of murder by the present appellants with the aid of other accused persons also, two of them said to have died during the pendency of trial and two have been acquitted as they remained by

standers, we find no reason or justification for letting off the present accused appellants before us who committed the said heinous crime of murder of a human being bringing to an end life of a young man of 25 years, Pramod Bhargava.

20. Consequently, both these appeals are dismissed and the sentences awarded by the learned trial court is upheld and confirmed.

(Dr.VINEET KOTHARI),J. (Mrs.GYAN SUDHA MISRA),J.

VS/